

ENVIRONMENTAL QUALITY COUNCIL

September 14-15, 1995, Montana State Capitol

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Mr. Jerry Noble, Chair
Rep. Vicki Cocchiarella,
Vice Chair
Sen. William Crismore
Sen. Steve Doherty
Sen. Lorents Grosfield
Rep. Dick Knox
Sen. Ken Mesaros

Rep. Bill Ryan
Rep. Debbie Shea
Mr. Jerry Sorensen
Ms. Jeanne-Marie Souvigny
Rep. Bill Tash
Mr. Greg Tollefson

COUNCIL MEMBERS EXCUSED

Sen. Vivian Brooke
Mr. Glenn Marx
Rep. Scott Orr
Sen. Jeff Weldon

STAFF MEMBERS PRESENT

Mr. Todd Everts
Mr. Michael Kakuk
Ms. Sallie Melcher
Ms. Kathleen Williams

VISITORS' LIST

Attachment #1

COUNCIL ACTION

Adopted the Montana Environmental Policy Act (MEPA)
implementation work plan.

Voted to approve the appointment of two subcommittees to follow
implementation of MEPA and the HJR 10 Enforcement Study.

(Subsequently voted to have all members write down what
subcommittee they wanted to serve on and then, after review by
the chair and co-chair, reappoint the MEPA and the enforcement
subcommittees.)

Voted to not appeal the Honzel decision and to participate in the
subcommittee formed by the Legislative Council to determine how
best to implement the Honzel decision. SEN. GROSFIELD and REP.
COCCHIARELLA were appointed to the subcommittee.

Approved staff organizing a panel to explain and discuss the Environmental Risk Assessment and Prioritization process.

Voted to formally request the Department of Environmental Quality (DEQ) to report back to the EQC as soon as they had an official evaluation of the DEQ's new enforcement policies.

MEPA TRAINING

On September 14, 1995, from 1:00 to 5:00 in Room 108 of the Capitol, the Legislative Environmental Policy Office (LEPO) staff provided MEPA training for EQC members.

CALL TO ORDER AND ROLL CALL

On September 15, 1995 the chair called the meeting to order at 8:30 A.M. He asked the secretary to take note of members in attendance. (ATTACHMENT #2)

APPROVAL OF MINUTES

The Council voted to approve the minutes of the July 6, 1995 meeting.

ADMINISTRATIVE MATTERS

Staff Changes

MR. EVERTS introduced MS. WILLIAMS, the new researcher (resource policy analyst) who replaced MARTHA COLHOUN. He discussed progress in the hiring process for the other resource policy analyst position left open when MR. EVERTS was promoted to Legislative Environmental Analyst (LEA). MR. EVERTS followed procedure by first contacting the Department of Administration to see whether there were any qualified candidates in the Reduction in Force (RIF) pool. It was determined that one individual from the RIF pool might be qualified. That person was interviewed and found to be not qualified for the position. The opening was then

announced to the public. The staff was, at the time of this EQC meeting, reviewing applications and MR. EVERTS reported that the position would be filled by early October.

Legislative Reorganization Issues

MR. TOLLEFSON asked MR. EVERTS if he was still classified as "acting" LEA.

MR. EVERTS said that he was still classified as "acting." He said that at the last meeting of the Legislative Council, it was voted to not concur with the EQC's recommendation that MR. EVERTS be the LEA. He said because the legislative division is currently researching a new pay/classification plan, the Legislative Council would like to wait until the new plan is in place before confirming MR. EVERT's position. He explained that the LEPO is no longer an agency, but is an office within the legislative division.

REP. TASH asked how this change might affect the EQC/LEPO budget. MR. EVERTS said that any effect would most likely be positive. He said the LEPO would now be able to share many of the legislative resources, i.e. manpower, supplies, use of equipment, etc.

MR. NOBLE asked if there were any more questions regarding staff or the legislative reorganization.

MR. NOBLE complimented staff on their MEPA training presentation of the previous day and encouraged all Council members to read the MEPA manual.

MR. TOLLEFSON asked if MR. EVERTS was seeking an attorney to fill the currently open resource policy analyst position.

MR. EVERTS said no, not necessarily, although there were applications from attorneys.

MR. NOBLE announced there would be, within the next hour, a joint briefing with the Legislative Council in Room 325. The subject of the briefing would be Judge Honzel's decision regarding the public's right-to-know lawsuit brought against the Legislative and Environmental Quality councils.

MONTANA ENVIRONMENTAL POLICY ACT IMPLEMENTATION PROCESS

MR. EVERTS introduced EXHIBIT 2, a "road map" for MEPA implementation. MR. EVERTS went over the exhibit for the benefit of the EQC.

REP. COCCHIARELLA asked how the schedule for implementation compared with past schedules. MR. EVERTS said this schedule was "less aggressive." He said during the last interim the staff had been providing one or two customized trainings per month.

REP. COCCHIARELLA said that if the Council decided to do MEPA training for public groups, it would have to be determined who the "public" would be. MR. TOLLEFSON observed that the training sessions have always been open to the public. MR. EVERTS said that was true, but there had never been a training session specifically targeted to the general public. MR. TOLLEFSON said that a public training would probably attract a familiar group

comprising regulated community and public interest groups, not "people off the street." REP. KNOX said he had thought that the EQC had provided public training in the past. MR. EVERTS said that while they had not ever offered a training specifically for the general public, they had provided a continuing legal education (CLE) session for attorneys. REP. KNOX said it was apparent to him through the discussion preceding passage of HJR 10 that both the regulated community and the public interest groups felt uneasy with the MEPA process. He said that he thought even if the public training sessions were attended solely by the regulated community and public interest groups it would be a valuable undertaking.

REP. COCCHIARELLA asked how much it would cost to do public training and if the Council should charge participants. She also wondered if the training sessions would be provided statewide. MR. EVERTS said there would be the cost of materials and staff time plus advertising.

MR. NOBLE asked how much participants were charged for the CLE session. MR. EVERTS said the attorneys were charged \$20, the cost of materials.

MR. NOBLE asked how the staff went about customizing the training for different groups. MR. EVERTS said each session was similar, except during the hands-on portion of training they would focus on real issues the participants were dealing with in their work. MR. SORENSEN said he felt the next step in getting the public training sessions underway would be to identify groups that might

be interested and send letters and get feedback regarding the level of interest.

SEN. GROSFIELD asked how much CLE's usually cost participants.

MR. EVERTS said anywhere from \$50 to \$200.??

REP. COCCHIARELLA moved to adopt the MEPA implementation work plan and to send out a letter to interested parties to find out the level of interest in public training. REP. TASH seconded the motion. The motion passed unanimously.

MR. NOBLE said he intended to appoint a MEPA subcommittee.

MR. EVERTS discussed goal 2 of the implementation plan, integrating regulatory impact analysis on private property rights into the MEPA rule review process. REP. COCCHIARELLA noted the large number of committees within the agencies working on MEPA implementation. She wondered if the EQC should try to attend these interagency meetings. SEN. MESAROS suggested that members of the EQC MEPA subcommittee attend interagency meetings to ascertain the workload involved in MEPA implementation.

MR. NOBLE asked JOHN NORTH, DEQ staff attorney, to explain what DEQ had accomplished so far regarding MEPA implementation. MR. NORTH said they had just started thinking about the process. He said the natural resource agency reorganization had been taking up much of the staff's time. They have set a goal for themselves to have administrative guidelines drafted by October 1. He said they then plan to have 8-10 meetings to draft rules. He said he would keep the EQC informed of the meetings.

***Joint Briefing for the Legislative Council and the EQC
on the Honzel Decision***

At this point in the meeting the EQC members were called to a joint meeting with the Legislative Council in Room 325 of the Capitol.

GREG PETESCH, staff attorney for the Legislative Council, briefed the joint session regarding the decision in the lawsuit brought against the two councils by the Montana Environmental Information Center. (EXHIBIT 3) He said Judge Honzel's decision was that the public's right to know is a constitutional right. He said the councils had a right to appeal the decision. The councils discussed the case. Some of the concerns expressed were that if people have access to bill drafts from the start, it will create too much of a disruption for the drafters. Some members talked about changing the definition of the word, "document." This led to statements of concern that the Legislative Council and EQC not do anything to subvert Judge Honzel's decision. It was noted the lawsuit came out of frustration of individuals not being able to see bills until right before they went to hearing. It was suggested that they should focus on improving that situation. Possibly it should be made policy that bills must have a draft deadline or they don't get heard. The Legislative Council and the EQC decided to discuss the issue some more and determine whether to appeal or not and if anything more should be done regarding this issue.

The EQC resumed their meeting in Room 108.

MR. NOBLE called for a return to the discussion of the MEPA work plan, goal #2. He asked for comments regarding budget and number of meetings. MR. EVERTS said the Council traditionally meets 9 or 10 times over the course of the interim. He said that the present EQC had already met 3 times. He said he hoped the new constraints put on the budget from having 17 instead of 13 members would be offset by the extra money in the budget for water policy.

MR. NOBLE asked how the subcommittees would be funded. MR. EVERTS said the subcommittees would have to limit the number of meetings they would have. MS. SOUVIGNEY suggested subcommittees meet right before the regular Council meetings so there would be no extra travel expense.

MS. SOUVIGNEY asked about item 4 in the MEPA work plan under the "Potential Work Plan for MEPA Rule Revision Process," which discusses an interagency work group with broad public participation to analyze SB 231. MR. EVERTS said there were two options--a traditional rulemaking approach or a more public-oriented process. MR. EVERTS said the Racicot administration would decide which would be more appropriate. REP. KNOX said he felt because of the importance of a thorough discussion and full public involvement regarding implementation of SB 231, there should be 10 to 12 meetings of the subcommittee, but that the subcommittee should be small.

SEN. GROSFIELD asked what was the function and role of subcommittees related to separation of powers. MR. EVERTS said that was certainly an issue.

MS. SOUVIGNEY asked if it was typical for the EQC to facilitate a rule review process. MR. EVERTS said that the EQC had in 1981 and in 1988, assisted in the rule revision process.

SEN. CRISMORE moved that the chair appoint a subcommittee to follow MEPA implementation. SEN. MESAROS seconded the motion.

MR. TOLLEFSON offered an amendment to the motion to say that the subcommittee be a two-person subcommittee. REP. KNOX said he thought two would be the minimum and four the maximum. MR. NOBLE said he didn't think number of members should be a part of the motion. He felt that could be a decision made after passage of the motion. He called for a vote on the motion to establish a MEPA subcommittee. The motion passed unanimously. MR. NOBLE asked who would be interested in serving on the subcommittee. SEN. MESAROS indicated his interest. MR. NOBLE said that members interested in being on the subcommittee should let him know before the afternoon.

REP. COCCHIARELLA said she thought it would be imperative to design a method to measure the success of MEPA implementation and training. She suggested the subcommittee should determine criteria for the George Darrow MEPA award and determine an appropriate MEPA implementation strategy. MR. NOBLE said he thought criteria for selection of the Darrow Award had already been established. MR. EVERTS said there were existing criteria

but that there had been discussion in the past of altering the criteria to make them more quantitative.

REP. COCCHIARELLA moved to form a subcommittee that would meet once to create an evaluation process for the Darrow award.

MR. TOLLEFSON seconded the motion. The motion passed unanimously.

SEN. GROSFIELD suggested the subcommittee should meet right before the next meeting and that staff should gather information for the subcommittee in advance so that the subcommittee can make it a decision making meeting.

MR. NOBLE announced he was appointing a three-member George Darrow Award subcommittee comprising MR. SORENSEN, MS. SOUVIGNEY and REP. KNOX. (The duties of this subcommittee were subsequently assigned to the MEPA subcommittee and this subcommittee was dissolved.)

SEN. LYNCH joined the meeting and announced that the Legislative Council had voted to not appeal the Honzel decision. He asked the chair of the EQC to appoint two EQC members to serve on a subcommittee that would be charged with devising a procedure whereby the public could request information during the bill drafting process. The committee would also be charged with devising a way to facilitate getting privately drafted bills prepared for hearing. In addition to two EQC members the subcommittee would include two Legislative Council members, two representatives from the Legislative Auditor and two from the

Legislative Fiscal Analyst. SEN. LYNCH said the representatives from the Legislative Council would be REP. MERCER and REP. LARSON.

REP. COCCHIARELLA said she was concerned with a suggestion made in the joint session about changing the definition of the word "document" to try to "get around" the decision. She said the Council should not be involved in any plan that would undermine the decision or the public's right to know. She said the EQC should make a separate decision from the Legislative Council's. She moved to not appeal the Honzel decision and that the EQC not be involved in any decision that would indicate they do not fully support the public's right to know.

REP. KNOX said he agreed with REP. COCCHIARELLA because he thinks the legislative process works well as it is. He said that although he recognizes that letting the public become involved in the drafting phase of the bill can be time consuming and can slow things down, he feels involving interested parties is not a part of the process that can be skipped.

MR. TOLLEFSON said as a contributor and supporter of the MEIC, he would have to excuse himself from voting. He asked if it was the business of the EQC to tinker with the legislative process; if the EQC would even want to make suggestions regarding the process.

MR. NOBLE said the EQC would have to involve themselves because they are named in the lawsuit.

MR. SORENSEN said he shared MR. TOLLEFSON'S concern. He said the representatives on the subcommittee should be legislators. He said he was hearing a lot of discussion presuming that bill drafting will become more and more a step in the process that is done outside the legislative staff. He said he thinks that's true.

MR. NOBLE moved that the EQC vote to not appeal and to participate in the subcommittee. The motion passed with MR. TOLLEFSON and MS. SOUVIGNEY abstaining. MR. NOBLE appointed REP. COCCHIARELLA and SEN. GROSFIELD to the subcommittee that will determine how best to work with the changes in the bill drafting rules.

ENFORCEMENT STUDY

MR. KAKUK introduced and explained EXHIBIT 4, "HJR 10 Study Goals," a memo from staff serving as a "road map" toward reaching the goals set forth in HJR 10. He said the Council should decide after he went over the memo how many of staff's suggestions they wanted to pursue and to what extent.

SEN. DOHERTY said, regarding the Energy Policy Study the EQC did last interim, that in the interest of getting the issue resolved, public utilities had provided funding for the study. He speculated there might be private sector parties interested in funding the HJR 10 study.

REP. TASH said he thought the study regarding groundwater on the upper Jefferson was a good example of such public/private cooperation.

MR. EVERTS said the EPA had hired a contractor to look at various enforcement and compliance programs. He said that might be another option in this case, as well.

MR. SORENSEN said industry might not want to contribute money as it might make it look like they were "buying an enforcement policy." He said he felt that an enforcement and compliance strategy was clearly a government function.

SEN. GROSFIELD referred to his earlier question of MR. EVERTS as to the amount of money paid for CLE's. He said perhaps a MEPA CLE could be a source of funds for an enforcement study or other study.

MR. KAKUK completed his explanation of the HJR 10 Enforcement study plan.

MR. TOLLEFSON asked if the review of the water quality statutes was occurring currently and if so, if it was thorough and detailed. He said the EQC probably would not want to duplicate a review that is already being performed.

MR. KAKUK said that what the DEQ was doing is putting together a new water quality act. He said he envisioned the EQC reviewing the process to ensure consistency and continuity.

REP. KNOX said the legislative concern regarding and support for HJR 10 is focused on consistency and uniformity of the application of statutes. He said he felt the Council would be

ignoring HJR 10 if they did not conduct an independent review of the rulemaking process. SEN. DOHERTY asked if the DEQ was taking into consideration consistency and uniformity in their review of changes in the water quality laws. MR. ELLERHOFF said yes, they were attempting to comply with HJR 10. MR. KAKUK said the *Enforcement Policy Manual* (EXHIBIT 12) had been adopted as of August, 1995. He said that document will play a large part in the Council's study.

SEN. DOHERTY asked if the DEQ took all the issues surrounding enforcement and compliance into consideration and who they were involving in the study. MR. ELLERHOFF said he had not been intimately involved in enforcement policy formation, but he imagined that it would be an evolutionary process. He said he was certain the concerns of the EQC would be taken into account by the DEQ.

MR. TOLLEFSON said he had some questions regarding the goals in the enforcement study plan. He said some of the goals seem broadly focused and some seem narrow. He said it looked to him as though some of the goals could be synthesized.

SEN. GROSFIELD referred to SEN. DOHERTY'S comments regarding involving the public in the formation of enforcement policy.

SEN. GROSFIELD said he felt that was what the EQC was doing through HJR 10. He referred to goal 3 in Exhibit 4, regarding the appropriateness of the goals. He said it was more important to look at the appropriateness of specific rules and laws.

MR. TOLLEFSON asked for MR. KAKUK's opinion regarding the most effective way to move ahead. MR. KAKUK said he had noted in the enforcement study plan the topics he felt would be most efficiently dealt with by subcommittees. He said it would be possible, but probably too time-consuming, for the full Council to try to achieve all the listed goals. He said he felt a subcommittee was almost a requirement.

SEN. GROSFIELD said the nondegradation subcommittee during the previous interim worked well because of the high level of public involvement. He said there weren't many public participants, but those who came were very involved and attended consistently. The subcommittee adopted an informal round table. He said that if there was too large a group of public interested in participating in the enforcement subcommittee meetings, the meetings would obviously have to be more formal.

MR. TOLLEFSON said that, assuming there will be an enforcement subcommittee, he felt the subcommittee's first order of business would be to determine the next step in the study. MR. KAKUK said staff was asking for the Council to make a decision on how the process would work and to appoint a subcommittee to get to work.

MR. SORENSEN moved that the chair appoint a subcommittee to review the HJR 10 Enforcement Study. MR. TOLLEFSON seconded the motion. The motion passed unanimously.

MR. SORENSEN said the Council should keep in mind that there may not be time or funding to reach all the goals as stated and they should be prepared to modify the goals if necessary.

MR. NOBLE announced that he was appointing the following members to the Enforcement subcommittee: REP. KNOX (Chair), MR. SORENSEN, REP. SHEA, SEN. DOHERTY, SEN. CRISMORE, and REP. ORR.

MR. TOLLEFSON noted that MR. NOBLE had appointed only one public member to the subcommittee.

MR. NOBLE said he would review his appointments during the lunch break.

MR. KAKUK completed his review of the enforcement study plan.

MR. NOBLE said he was appointing MR. TOLLEFSON to the enforcement subcommittee. He appointed to the MEPA subcommittee SEN. MESAROS (Chair), REP. TASH, REP. RYAN, SEN. BROOKE and MS. SOUVIGNEY.

SENATE BILL 382 STUDY UPDATE

MR. GERALD MUELLER said he was under contract with the Consensus Council and charged with facilitating consensus regarding the propriety of joint and several liability. He explained what he had accomplished so far. After drawing up a list of 73 persons known to be interested in joint and several liability, he interviewed about 60% to find out the biggest issues surrounding the topic. One of the initial concerns he heard was that the list of interested persons did not reflect the diversity of thought on joint and several liability. To answer that concern, the Consensus Council decided to first form caucuses of interested parties. The caucuses would comprise these groups: citizens' advocates, environmental groups, potentially responsible parties, and government agency representatives. The

caucus concept was acceptable to the parties and the caucuses were formed. It soon became clear that a significant number of people were concerned with the presumption in the bill that joint and several liability would be eliminated. The word "eliminate" was eliminated, although elimination is still an option. MR. MUELLER said it was the tentative conclusion of the caucuses that a collaborative approach to the study would be worthwhile. All groups want to find the best way to clean up sites. MR. MUELLER observed that there is a high level of distrust and disagreement among the groups. But, MR. MUELLER said, the collaborative approach is specifically suited to divisive issues. He thinks all parties will be willing to "come to the table."

MR. NOBLE asked if there was public comment on any of the issues that had been discussed.

MR. NOBLE adjourned the meeting at noon for lunch. He reconvened the meeting at 1:40.

MR. NOBLE asked if there were questions or concerns regarding the subcommittee member assignments.

SEN. DOHERTY said he felt an efficient way to choose subcommittees would be to get feedback from each EQC member indicating which subcommittee each would like to serve on and/or which they would be willing to serve on, and then to take this into account when appointing the subcommittees.

MR. NOBLE said he had been trying to save some time, but he would abide by the Council's wishes.

SEN. DOHERTY moved that each member write down on a slip of paper what subcommittee he or she wanted to be on and then after the chair and the vice chair considered members' choices, the chair could reappoint the subcommittees. REP. COCCHIARELLA seconded the motion. The motion passed 7-6.

MR. NOBLE asked members to write down their preferences regarding subcommittees and MR. NOBLE said he would reappoint the subcommittees before the end of the meeting.

WATER POLICY OVERSIGHT

State Water Plan Update

MR. KAKUK said that RICH MOY had been invited to the meeting to fulfill the EQC's duty to analyze and comment on the state water plan.

RICH MOY, DNRC Water Management Bureau chief, said that under Montana law the DNRC is required to develop a state water plan. He said they had come under criticism from the legislature in 1983 for not fulfilling this duty and were encouraged to come up with a plan. They looked at different states' ways of doing this. They were particularly impressed with a consensus process used in Kansas. They adapted the process for Montana. The Montana process was to involve a consensus process among a 15-member advisory council, water user groups, water interests, legislators, and directors of natural resource agencies, plus steering committees. MR. MOY reported there had been three 2-year cycles so far of the state water plan. In the first three

cycles, the statewide issues addressed were federal hydropower licensing and state water rights, water information systems, agriculture water use efficiency and instream flow protection. In the first cycle, the general method they used for examining these issues was staff-prepared background papers complete with recommendations. The steering committees would then assess the recommendations. The steering committees raised concerns about this process that led the advisory council to seek more public involvement. They scheduled public meetings which were well-attended and very contentious. The last meeting, in Butte, was attended by 500 people. The crowd expressed a high level of discontent with the recommendations. The council and staff determined from this that something was wrong with their process. They determined that what was wrong was that the staff drew up the recommendations without enough public involvement in the first place. In the second cycle of the plan, the DNRC created broad-based steering committees who were charged with coming up with recommendations. They decided to have more public involvement in the early phases of the process. In the second cycle they took on the issues of water storage and drought management. The second cycle was very successful with implementing legislation. The third cycle added another issue--the integration of water quality and quantity. They created two steering committees. They had a very challenging year and a half trying to achieve consensus on this issue. There were very few pieces of successful legislation generated from the third cycle.

The lesson the advisory council learned this time was the importance of binding consensus. They also determined that it was a mistake to have the final decision maker in their process be the Board of Natural Resources and Conservation. The advisory council was broad based. This added a new dimension requiring consensus between the board and the council. A review was undertaken. Its results are outlined in the "State Water Plan Decision Summary." (EXHIBIT 6) Currently there is no water advisory board. Instead there is staff support to local watershed groups. Another project under the current plan is the Montana Watercourse in Bozeman. Their mission is to provide objective information and workshops to local watershed groups to help the groups solve problems. The water plan is focusing now on the statewide issues of surface groundwater use and management. The Missouri is closed all the way up to Moroni Dam until water adjudication is complete. Part of the Clark Fork is also closed. MR. MOY said the DEQ wants to make sure, in that case, that when ground water is appropriated, senior water rights holders are not adversely affected. Another issue is whether the state needs a statewide water conservation program.

MR. SORENSEN asked since there is no watershed advisory council, how will the work in the plan get done? MR. MOY said that outside of the statewide issues it will be up to the local watershed groups.

REP. TASH asked if the local groups were typically task force groups formed through the state government. MR. MOY said that

was sometimes true, other times a local group formed on its own and asked for assistance. He said that typically, after these groups work together for a few years, they want to initiate their own legislation.

SEN. MESAROS asked if there was anything in the water plan to address future water storage needs. MR. MOY said water storage had been addressed in the second cycle of the state water plan. He said the state would help anyone who wanted to set up water storage. They would help facilitate such a project, but they would not be able to fund it.

REP. TASH said last interim there was concern about the Big Hole River Drainage increasing storage. MR. MOY said since the early 1980s they have spent more time studying storage issues on the Big Hole than any other drainage in the state. Seventy-five to 150 proposed projects involving the Big Hole were eventually narrowed down to one project, which is not economically feasible now. MR. KAKUK said another outgrowth of the second cycle was passage of the Montana Water Source Policy Act setting forth state policy on development of water source projects in the state.

MR. SORENSEN asked what MR. MOY thought EQC's role in water policy should be. MR. MOY said he thought the EQC's role was to give advice, to offer suggestions and to provide guidance.

1995 Water Quality Legislation Status

MR. KAKUK explained EXHIBIT 7, "Water Policy Related Legislation." SEN. MESAROS asked if there would be reports in the future regarding the drought advisory committee.

MR. NOBLE said yes, if that was a topic of interest to the Council. SEN. MESAROS said he would find such a report valuable.

MS. SOUVIGNEY said she had been looking over the water legislation memo and thinking about legislation that evolved in the course of Water Policy Committee's last interim. She said she recalled many projects that were not necessarily related to legislation and that there were also many water-related bills with rulemaking associated and she said she was wondering if these issues aren't going to need some attention, especially issues surrounding some of the controversial bills.

MR. KAKUK said the Council could either let staff know what specific issues they were interested in and they would prepare updates or they could form a subcommittee to look at issues of interest. SEN. MESAROS said he thought it would be sufficient to go with full Council receiving updates and for Council members to request reports as needed. SEN. GROSFIELD said he agreed with SEN. MESAROS and specifically, he would be interested in a report on progress made under REP. KNOX's instream flow bill and also what progress Fish, Wildlife & Parks has made on the water leasing program.

SEN. DOHERTY said he feels that the significant number of water-related bills in the last session demonstrates there are many

water issues to be discussed and studied. He noted major instream flow bills, as well as six or seven rulemaking bills on water quantity and quality. He also noted that it was now the responsibility of the Council to oversee water issues since the WPC had been eliminated. He said he's not convinced that there isn't a need for a water subcommittee.

MR. NOBLE said the door has not closed on formation of a water subcommittee, but it would be sometime in the future.

SEN. GROSFIELD said he agreed with SEN. DOHERTY, but that the rulemaking bills would be part of the enforcement study subcommittee. He said the water quality "arena" would likely be an area of focus for the enforcement subcommittee.

ENVIRONMENTAL RISK ASSESSMENT PRIORITIZATION STUDY

MR. MALY introduced EXHIBIT 8, "Environmental Risk Assessment and Prioritization Project," outlining a course for a risk assessment study in Montana. He explained the staff's plan for proceeding to the next step--providing a presentation for the Council, should the Council approve. MR. TOLLEFSON said he is a strong advocate for risk assessment, and he thinks they should proceed cautiously. He felt it was too early to make a decision regarding whether to commit to the study. He requested that staff first prepare a report about what an ERAP is and what it could be used for. He said that would help the Council make an informed decision about whether to do the assessment.

MR. MALY said the staff had determined that a panel of individuals experienced in ERAP would be the best way to provide such information to the Council. He said if such a panel can be funded, they will go ahead with it.

REP. KNOX said he was still very concerned about the EQC sponsoring an ERAP and he would feel more comfortable having more information.

SEN. GROSFIELD said he still was not entirely clear regarding the purpose of an ERAP. He asked if it was to set priorities for work in future interims. He said HJR 10 was a mandate from the last legislature to perform a study. He said the EQC really has no choice in the matter. He asked, since the legislature directs the EQC where to focus attention, what would be the purpose of prioritizing risks on their own? MR. KAKUK noted that HJR 10 was originally requested by the EQC. He said the ultimate purpose of an ERAP would be to allow the Council to look at the issues most deserving of their attention and have solid documentation when they determined an issue was not a priority.

SEN. GROSFIELD said he felt there were issues the EQC should be looking at that they weren't, such as the many environmental issues surrounding development in Montana. He observed that a priority list might help the Council to focus on environmental priorities.

MR. TOLLEFSON moved to proceed with organizing a panel of experts to discuss ERAP. SEN. GROSFIELD seconded the motion. The motion passed unanimously.

MAJOR FACILITY SITING ACT COLLABORATIVE STUDY UPDATE

ART COMPTON, DEQ Facility Siting Bureau chief, reported that the collaborative study had so far revealed two emerging groups with major interest in the issue--the industrial concerns such as Exxon, Shell and Amoco who were asking, "Why do we need a siting act? Why won't or why can't MEPA suffice?" and sportsmen's and environmental groups on the other side, who think a siting act is important with respect to substantive protection separate from MEPA. MR. COMPTON said he feels the collaborative will fulfill its charge to draft legislation, but the legislation may not have the support of everyone "at the table." He says it looks like it will come down to the concept of MEPA vs. the facility siting act. He said he was formerly optimistic that the collaborative could hammer out a consensus piece of legislation, but that he wasn't quite so optimistic any more. He thinks they will do their best and try to come up with something that has the broadest support possible. He said there will most likely be final arguments, to be hammered out in legislative debate.

SEN. GROSFIELD asked MR. MUELLER, if he had asked the caucuses if they were willing to "come to the table." MR. MUELLER said he asked each group if it was time to give up and quit. They all said they wanted to continue. He said he thinks the opposing groups know their only other alternative is to "go back into battle" and he thinks neither side is confident it can win.

SEN. GROSFIELD said the "old wounds" surrounding the issue were very evident at the hearings and that he felt what MR. MUELLER was telling the Council was encouraging.

OTHER BUSINESS

The chair skipped to "Other Business" pending the arrival of MARK SIMONICH who was invited to the meeting to discuss the DEQ Water Quality Audit Update.

MR. NOBLE referred to the discussion at the July meeting of a Cenex pipeline proposal. He said he and REP. RYAN met with a geological engineer working on the pipeline.

MR. ELLERHOFF said the DEQ was in the process of reviewing the Cenex pipeline and that they were considering the concerns of both Cenex and of the environmental groups.

REP. RYAN said it looked to him as though Cenex was addressing concerns of the groups who were raising questions about the pipeline.

MR. NOBLE said at the last meeting when they were discussing the pipeline, Glenn Marx had said there was not much the state could do in terms of regulating the pipeline because there were few state permits required.

MR. ELLERHOFF said there were more permits required than was indicated then. He said that the EA process for the project was in the final stage and the state was going to decide that an environmental impact statement won't be needed. He said they would formally present that statement September 11 at the Land

Commissioners meeting. In terms of permits and authorizations, the pipeline was approved.

MR. NOBLE said there had been some comment after the July meeting regarding the Silver Bow Creek cleanup discussion. MR. EVERTS said they received a letter from a group in Butte, CTEC (EXHIBIT 9), complaining they had been overlooked by not being invited to speak at the July meeting at which the Silver Bow Creek cleanup was discussed. The staff sent a set of minutes to the group with a letter saying that if their concerns weren't addressed in the minutes, to let MR. EVERTS know. He didn't hear from them again. MR. NOBLE said it would be hard to make sure every interested group was issued individual invitations. He said he thought all points of view had been expressed at the meeting. MR. KAKUK said he coordinated the presentation and contacted all the parties mentioned in the newspaper stories about the cleanup issues. In addition, he got more names to contact from those initial parties. He said the organization was not mentioned by anyone he talked to, and so they did not get invited. He said staff makes every effort to invite everyone who might be interested and they would commit themselves to continuing and improving their efforts.

MR. EVERTS introduced EXHIBIT 10, a letter from the Poplar Chamber of Commerce. He said the Poplar Chamber of Commerce invited the Council to visit a building there that, apparently, had some asbestos problem. He said if the Council wished, he

would call the mayor of Poplar and find out exactly what it was that the Poplar chamber was asking for. MR. NOBLE said he was not certain what the EQC would be able to do to help the people in Poplar. MR. TOLLEFSON said each EQC member had received a copy of the letter. He recommended that MR. EVERTS write a letter and explain that the EQC was probably not the appropriate group to help with the problem.

WATER QUALITY AUDIT UPDATE

MR. SIMONICH, director of the DEQ, came to the meeting to update the Council on the water quality audit done last year. He introduced EXHIBIT 11, a status report of DEQ efforts to implement recommendations of the performance audit report on enforcement of the Water Quality and Public Water Supply acts. MR. SIMONICH "walked through" the memo which details the DEQ's response to each of the recommendations from the legislative auditor regarding the DEQ's enforcement policies. He also supplied members with copies of the DEQ Water Quality Division's new enforcement manual. (EXHIBIT 12) REP. KNOX said he would like to hear a report regarding the regulated community's, as well as public interest groups' reactions to the manual. MR. SORENSEN asked how DEQ staff felt about the manual. MR. SIMONICH said from what he could tell there was good staff support. REP. KNOX moved that the DEQ report back to the EQC with a formal evaluation of the new policies compiled from the public as soon as they have it. MR. SORENSEN seconded the motion. MR.

TOLLEFSON said he thought the Enforcement subcommittee should deal at length with such an evaluation. The motion passed unanimously.

MR. SIMONICH continued to walk through the memo.

MR. NOBLE said, regarding recommendation 6, (that the Department establish a policy and procedure to ensure comprehensive and consistent enforcement of the WQA at hard rock mines) that he recalled there had been frustration in the past about the amount of time necessary to obtain all the permits necessary for projects. MR. NOBLE asked if the reorganizing of departments would help this situation.

MR. SIMONICH said he hoped so. He said that now, because regulatory staff were all under one roof, he could easily get everyone together to look at a situation, ie. a Superfund site. He said he thinks with one person administering all regulatory people, it has become easier. MR. SIMONICH completed his walk-through of the memo.

JULIA PAGE, representing the Northern Plains Resource Council asked what the DEQ was going to do regarding the backlog of unsettled enforcement cases and at what point the new policies will take effect. MR. SIMONICH said the issue of how to address the old cases was controversial. He said Director Robinson had issued a memo this spring to the Water Quality Division listing criteria for closing old cases. Old cases that were now in compliance could be dropped. In addition, the division was instructed to do what would be necessary to get rid of any others

that were close to being closed. MR. SIMONICH said no cases had yet been closed. He said August 15, 1995 was the date new policies became effective.

It was decided among members to hold the next EQC meeting on December 7 and 8. December 7 will comprise subcommittee meetings and an ERAP panel discussion.

The chair asked the EQC members to write down their preferences for the subcommittee they would like to serve on. After considering the preferences indicated, MR. NOBLE announced the amended subcommittees. The Enforcement subcommittee will comprise REP. KNOX (Chair), SEN. GROSFIELD, REP. SHEA, SEN. DOHERTY, SEN. CRISMORE, REP. COCCHIARELLA, MR. TOLLEFSON and MR. SORENSEN. The MEPA subcommittee will comprise SEN. MESAROS (Chair), REP. TASH, REP. RYAN, SEN. BROOKE and MS. SOUVIGNEY. REP. KNOX said he had selected SEN. GROSFIELD as vice chair of the enforcement subcommittee. The chair adjourned the meeting at 4:30.